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In The
Supreme Court of the United States
October Term, 1995

LARRY D. STORER AND
MARGARET K. STORER,
Petitioners,

v.

BRUCE COMLY FRENCH, TRUSTEE
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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October 11, 1995

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QUESTIONS PRESENTED FOR REVIEW

1. Can Congress permit the states to determine the amount of contract impairment under 11 U.S.C. §522(b)(1) (the State "opt-out" provision for property exemptions) without violating the requirement of "uniformity" under Bankruptcy Clause and the Contract Clause of the U.S. Constitution?

PARTIES TO THE PROCEEDING AND RULE 29.1 STATEMENT

The petitioners in this case are Larry D. and Margaret K. Storer. They were debtors in the bankruptcy court, appellants in both the district court and court of appeals.

The respondent, Bruce Comly French, was the Chapter 7 trustee in the bankruptcy court, and appellee in both the district court and the court of appeals.

28 U.S.C. §2403(b) applies. The State of Ohio, represented by Betty Montgomery, and the United States of America, represented by the Solicitor General, may also be respondents.

No party is a corporation.

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Petition for a Writ of Certiorari

OPINIONS BELOW

The court of appeals opinion (Pet. App. 1a-9a) is reported at 58 F. 3d 1125 (6th Cir. 1995).

The opinion by the district court is not reported but is found at Pet. App. 10a-11a.

The opinion by the bankruptcy court is not reported but is found at Pet. App. 12a-15a.

JURISDICTION

On July 13, 1995 the court of appeals issued a final decision. App. *infra,* 1a. Petitioners filed this petition for certiorari on October 11, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE

Section 522 of Title 11, United States Code, Sections 2329.66 and 2329.662, Ohio Revised Code, Article I, Section 8, Clause 4, Article I, Section 10, Clause 1, and Amendments V and XIV of the U.S. Constitution are reproduced, in relevant part, at App., *infra,* 16a-32a.

STATEMENT

1. Congress has the authority to enact "[u]niform laws on the subject of Bankruptcies ..." U.S. CONST., art. I, § 8, cl. 4. States have some coextensive authority in bankruptcy law, but states cannot relieve a debtor of his or her obligations without impairing contract in violation of the Contract Clause. U.S. CONST. art. I, § 10, cl. 1.

Exempt property is property that the law permits a debtor to retain and protect from the trustee and creditors. Its policy rationale is to provide the debtor with a "fresh start". To the extent the value of a debtor's property exceeds the limits of the exemptions, the amount of debt discharged in bankruptcy is effectively reduced. The reason is the debtor must pay the debt, at least in part, by making the non-exempt property or its equivalent available for payment on that debt. The difference between debts and non-exempt property constitutes the amount of debt discharged.

a. The Bankruptcy Act of 1978, 11 U.S.C. §§ 101-151326 (1995), introduced a new exemption scheme resulting in a hodgepodge of federal and state bankruptcy exemption laws across the country. The federal exemptions, found at 11 U.S.C. §522(d) (1995), permitted, as relevant in this case, a debtor to exempt up to $7,500.00 in a homestead. Joint debtors could exempt $15,000.00[1]

States also have exemption statutes which restrict the amount of a debtor's assets can be reached by a creditor in state court. Section 522 also allows states to "opt-out" of the federal exemption schedule and utilize their own schedules. 11 U.S.C. §522(b)(1) (1995). Ohio directed that its residents must only utilize the Ohio exemptions. OHIO REV. CODE ANN. §2329.662 (Baldwin 1995). Ohio residents may only exempt $5,000.00 in a homestead. OHIO REV. CODE ANN. §2329.66(A)(1)(b) (Baldwin 1995).

b. The states' responses to Section 522(b)(1) have varied. In total 39 states allow law debtors the use of federal exemptions or the equivalent. Ohio does not. Section 522 (b)(1) coupled with the various state laws permits debtors, and their creditors, to potentially face five different outcomes dependent upon the debtor's residence at the time of filing: **a)** twenty three (23) states only allow use of their own *more generous* state exemptions; **b)** eleven (11) states permit only use of their own exemptions which are more restrictive than the federal exemptions; **c)** two (2) states permit use of only their own exemptions, which are equivalent to the federal exemptions; **d)** eleven (11) states allow debtors to choose between their state and the federal exemptions; and **e)** three (3) states and the District of Columbia only make use of the federal exemptions.

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[1]In 1995, this was amended to allow for exemptions of $15,000 and $30,000 respectively. Pub. L. 103-394, Sec. 108(d)(6).

Of those forbidding the use of federal exemptions, rather than reducing the exemption like Ohio, many states have made their homestead exemption unlimited in value. For example, a Texas debtor can exempt one or two lots in a city, town or village not exceeding one acre of land plus the improvements thereon, with no dollar limit. TEX. CONST. art. 16, § 50: TEX. PROP. CODE § 41.002 (West 1995) App., *infra*, 34a. Since the value is unlimited, one could exempt even a million dollar mansion.

The effect of the 1978 Act is such that creditors and debtors in the same or different states are treated dissimilarly. Dissimilar treatment of debtors and creditors occurs in *different states* where state A opts-out of the federal exemptions and state B does not. In this case, debtors in state A are bound to state A exemptions while debtors in state B have access to the federal exemptions. Dissimilar treatment of debtors and creditors in *the same state* also occurs where a state does not opt-out of the federal exemptions. Here, debtors have a choice between the state or federal exemptions. In some states, such as Ohio, debtors are confronted with a mix of bankruptcy and state insolvency exemptions.

Kansas does not permit its citizens to use the federal exemptions but allows the debtor to protect the entire homestead. KAN. ST. ANN. § 60-2301 (1995) App., *infra*, 33a. North Dakota likewise does not permit use of the federal exemptions, but protects up to $80,000 of the homestead. N.D. CENT. CODE. § 47-18-01 (1995). Oregon allows exemption of $25,000 for an individual and $33,000 for joint petitions. OR. REV. STAT. § 23.240 (1995) App., *infra*, 36a. Iowa's homestead exemption is only subject to a forty acre limit with no monetary restrictions. IOWA CODE ANN. § 561.16 (West 1995) App., *infra* 36a.

Michigan's schedule is less than Ohio ($3,500), MICH. COMP. LAWS § 27A.6023(1)(h) (1995) App., *infra*, 36a, but the debtor may choose the higher federal exemptions.

These examples illustrate that there is a significant difference in the "uniformity" of the Bankruptcy Act of 1898, 30 Stat. 544, chap. 541 (1898) and 1978 Acts. Under the 1898 Act, all debtors nationwide were able to fix the amount of property exempt under their state insolvency laws. In that case, both creditors and debtors could uniformly look only to state law to determine their remedies. Under the 1978 Act, debtors and creditors in different, and in some cases in the same states, can be bound by either federal, state, or federal-state exemption schemes.

The various exemption schemes sometimes differ not only in monetary amounts but by the interest exempted. Some states protect only realty used for a residence while others include personalty (for example, a mobile home or cooperative apartment unit) used for residence. The federal exemptions include burial plots but Ohio does not. Some states treat the homestead exemption as a separate exemption. Others, as does Ohio, include the homestead exemption in formulating caps on other exemptions. OHIO REV. CODE ANN. §2329.66(A)(4) (Baldwin 1995).

The state exemptions in bankruptcy are not always the same as in state collection actions. Some states have established exemptions only available in federal bankruptcy. For example, Ohio allows a $400 exemption for cash or other property in federal bankruptcy, but not in its own collection cases. OHIO REV. CODE ANN. §2329.66(A)(4)(a), (18) (Baldwin 1995).

2. The Debtor-Appellants, Larry D. and Margaret K. Storer, commenced a case under Chapter 7 of the 1978 Act. Their home was valued at $22,000, with a mortgage of $7,800. This left an equity of $14,200. After utilizing the Ohio exemptions, there remained $4,200 of non-exempt property. The Trustee moved to have the house appraised and auctioned in order to liquidate the non-exempt equity. In their amended schedules, the Storers each claimed an exemption of up to $7,500.00 ($15,000.00 jointly)

under Section 522(d)(1) rather than OHIO REV. CODE ANN. § 2329.66(A)(4) (Baldwin 1995).

3. The Trustee objected to Storers' use of the federal exemption. The bankruptcy court, per Judge Richard Speer, agreed with the Trustee and denied the exemption. App., *infra,* 12a - 15a. The Storers timely appealed to the district court. By consent of the parties, the matter was heard by then magistrate judge, now district judge, James Carr. Relying upon the Sixth Circuit's decision in *Rhodes v. Stewart,* 705 F. 2d 159 (6th Cir.), *cert. denied,* 464 U.S. 983 (1983), he affirmed the bankruptcy court. App., *infra,* 10a- 11a. Storers timely appealed the decision of the district court to the court of appeals. 28 U.S.C. § 1291 (1995).

4. On July 13, 1995, the Sixth Circuit affirmed the trial court. *Storer v. French,* 58 F.3d. 1125 (6th Cir. 1995), App., *infra,* 1a-9a. That court relied upon this Court's holding in *Hanover Nat'l Bank v. Moyses,* 186 U.S. 181 (1902). The court of appeals, citing its former decision in *Rhodes,* which relied on *Moyses,* held that Congress did not intend to foreclose the states from enacting more restrictive exemptions or it would not have enacted the opt-out language in Section 522(d). *Rhodes,* 58 F.3d at 1129 (App., *infra,* 6a-7a).

REASONS CERTIORARI SHOULD BE GRANTED

This Court's decision in *Moyses* needs to be reconsidered in light of the 1978 Act. In *Moyses,* this Court held that since the right to legislate bankruptcy laws was coextensive between the federal and state governments, deferral (not delegation) to state law was not unconstitutional. *Moyses,* 186 U.S. at 188. After all, the creditor had the right to the present property of the debtor through the state courts while the debtor had a personal obligation to pay the debt. States could pass laws limiting the amount of property that a creditor could forcibly obtain in its state courts, but because of the Contract Clause, they could not pass laws that abrogated the underlying obligations or afford

relief to the debtor from actions in other states' courts. *Id.* Congress, on the other hand, could legislate avoidance of contracts altogether through bankruptcy. *Id.*

Moyses, however, did not deal with the establishment of federal exemptions concurrent with state exemptions, and the simultaneous grant of authority to the states to deny its citizens the use of the federal scheme. Further, it failed to consider the effect of a state setting the amount of contract abrogation in violation of the Contract Clause.

The result of the 1978 Act is distinctly different from the uniformity facing the *Moyses* court. The current system is a heterogony of federal exemptions in some states, state exemptions in other states, and both federal and state exemptions in still other states. Additionally, some state exemptions apply to both bankruptcy and state actions, some to only bankruptcy. Thus, where, a debtor in 1902, regardless of his or her domicile state, could protect the same property in federal bankruptcy as he or she could in state insolvency proceedings, today, depending on state citizenship, some debtors can avail themselves to additional or different protection in federal bankruptcy proceedings. These inequities caused by the 1978 Act have resulted in a conflict of opinions. Compare *Rhodes*, 705 F. 2d 159, and the court of appeals decision in this case (App. *infra*, at 1a-4a), with *In re Locarno*, 23 B.R. 622 (Bankr. D. Md.), and *In re Davis*, 16 B.R. 62 (Bankr. D. Md. 1981).

The resulting scheme of national bankruptcy law can force an Ohio couple in federal bankruptcy to lose their modest home for $4200, while a debtor in Texas in federal bankruptcy can keep a million dollar mansion on 200 acres. This defies rationality and the uniformity required by U.S. CONST. art. I, § 8, cl. 4, and was not considered by this Court's decision in *Moyses.* It is this disparity in levels of exemptions, based entirely on state residency and state legislature's involvement in contract impairment, that compels a revisit to the definition of "uniform

laws" and consideration of the line demarcating the limits of exclusive power of Congress in the area of commerce and bankruptcy.

I.

Among the objectives of the United States Constitution's Framers was to provide Congress with the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States;" U.S. CONST. art. I, § 8, cl. 4. Concurrent with this grant was the limitation on the states in the same area: "[N]o State shall...pass any...Law impairing the Obligation of Contracts." U.S. CONST. art. I, § 10, cl. 1. The misuse by the court of appeals of this Court's decision in *Moyses* construing a completely different bankruptcy law as approval of the 1978 Act in the area of property exemptions counters the Framers' clear intent as to what the states could and could not do in the area of bankruptcy.

A.

In 1819, Chief Justice Marshall analyzed the Framers' intent in *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122 (1819). Marshall stated:

> If, in the opinion of congress, uniform laws concerning ought not to be established, it does not follow, that partial laws may not exist, or that State legislation on the subject must cease. It is not the mere existence of the power, but its exercise, which is incompatible with the exercise of the same power by the states. It is not the right to establish these uniform laws, but their actual establishment, which is inconsistent with the partial acts of the states.

Id. at 196. In other words, Marshall believed that the Bankruptcy Clause presented Congress with two options. If it exercised its

bankruptcy power, federal bankruptcy laws would be established and the states' partial laws would be suspended for the duration of the federal laws. If Congress did not exercise its power, the partial laws of the states would remain in tact. This suggests a notion of consistent (or "true") uniformity without deferral to state laws.

James Madison specifically addressed the Bankruptcy Clause in The Federalist Number 42. He wrote:

> The power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States that the expediency of it seems not likely to be drawn into question.

THE FEDERALIST No. 42, at 308 (J. Madison) (B. Wright ed. 1961). The relevancy of this writing was explained by one commentator:

> Madison thus promoted the bankruptcy clause as a grant of power to safeguard the nation's interest in establishing and maintaining a single market for the extension of credit without interference from parochial or otherwise obstreperous action on the part of the states.

Judith Schenck Koffler, *The Bankruptcy Clause and Exemption Laws: A Reexamination of the Doctrine of Geographic Uniformity*, 58 N.Y.U.L. REV. 22, 41 (1983).

In light of our more mobile society (recognized by Congress in 11 U.S.C. § 109 through the expansive definition of a debtor) and the comparison of the Texas and Ohio exemption laws above, one can foresee the realistic potential for abuse of the federal bankruptcy laws. For example, prior to filing bankruptcy, a debtor could liquidate all his assets, move to Texas, buy an

expensive house, then declare bankruptcy. In this scenario, the debtor could exempt the entire homestead from the bankruptcy estate. Those Ohio residents unable to move to another state and claim exemptions uniform with other states are treated differently. This militates against any possibility of uniformity. This was one of the evils the Framers sought to cure.

In as much as the Framers used the word "uniform" twice in the same clause (once for "uniform rule of naturalization" and once for "uniform bankruptcy laws"), it follows that the Framers anticipated the same uniformity for naturalization as that for bankruptcy--no state encroachment. This Court has drawn inferences based upon "the presumption that a given term is used to mean the same thing throughout a statute," as well as the maxim *noscitur a sociis* ("a word is known by the company it keeps"). *See, e.g., Gustafson v. Alloyd*, _ U.S. _, 115 S.Ct. 1061 (1995).

Early Congressional interpretation of the Bankruptcy Clause confirm this. This Court has stated that the acts of early Congress deserve the courts' careful attention when the constitutionality of a statute is being examined. See *U.S. v. Watson*, 423 U.S. 411 (1975); *Cooley v. Bd. of Warrens*, 53 U.S. 299 (1851). The reason behind this proclamation is that the acts of early Congress provide credible evidence as to the intent of the Constitution's drafters. *Id.* An examination of the early bankruptcy laws reveals legislative intent to enact consistent national uniform bankruptcy law.

The first Congressional interpretation of the Bankruptcy Clause was nation's first bankruptcy law which was enacted in 1800, only eleven years after the Constitution's ratification. Bankruptcy Act of 1800, 2 Stat. 19 (1800). During those eleven years, there was a multitude of varying and inadequate state insolvency laws. 1 COLLIER ON BANKRUPTCY ¶ 0.03 (14th ed. 1974). The property exemptions in the Act of 1800 were

independent of state law and debtors were entitled only to those exemptions listed in the Act. 2 Stat. 19, §§ 5, 18, 34, 35.

Though the Act of 1800 was repealed in 1803, 2 Stat. 248 (1803), the role that the Act of 1800 played in demonstrating the manner in which early Congress incorporated the Framers' intentions was not affected. "'In 1824...Daniel Webster introduced and strongly supported a bill for a bankruptcy law designed to supplant the 'twenty-four different and clashing systems' of the States. President Adams recommended the passage of the law in 1825.'" COLLIER ON BANKRUPTCY at ¶ 0.04 (citing Senate Doc. No. 65, 72nd Cong., 1st Sess. ((1932) 51, n.6). Senator Hayne, speaking to the Senate on May 1, 1825, supported enacting a federal bankruptcy law which would preempt the states' insolvency laws which he characterized as "inefficient, unjust, and ruinous in their operation." 4 ELLIOT'S DEBATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION 490 (J. Elliot 1845). In 1841, the nation's second bankruptcy law was passed. Bankruptcy Act of 1841, 5 Stat. 440 (1841) (repealed 1843). This Act retained its predecessor's uniform treatment of exempt property. *Id.* at Ch.9, §§ 3,5.

Justice Joseph Story stated that the bankruptcy uniformity provision was designed to remedy the havoc created by the multiplicity of state laws. J. Story, 2 COMMENTARIES ON THE CONSTITUTION 45 (4th ed. 1873) (1st ed. Boston 1833). Story's analysis has drawn additional and recent support. *See e.g.*, Nadelman, *On the Origin of the Bankruptcy Clause*, 1 AM. J. LEGAL HIST. 215, 221 (1957); Koffler, 58 N.Y.U.L. REV. 22, 54 (1983); Comment, *Bankruptcy Exemptions: Whether Illinois's [sic] Use of the Federal 'Opt-Out' Provision is Constitutional*, 1981 S. ILL. U. L. J. 65, 73-82 (1982).

B.

One need only look at the result of the 1978 Act to see the lack of uniformity. As indicated earlier, under Ohio law, the

Storers' modest home is subject to being auctioned in order to liquidate approximately $4000 of equity. On the other hand, a Texas debtor would not face such a risk in similar or even much greater property values. One commentator explained the combined effect of the federal and Texas' exemption laws:

> [I]f a debtor's property and improvements at the date of filing of the petition are worth $200,000, but subject to a $70,000 mortgage, the homestead will be exempt to the extent of $7,500 [under the federal exemptions] compared to a possible $190,000 exemption under the Texas urban homestead exemptions. Furthermore, the same house and property located in rural Texas could be exempt in its entirety. The remaining $192,500 will be nonexempt property under the federal exemption....

Comment, *The New Bankruptcy Code: A Comparison of Texas and Federal Exemptions*, 17 HOUS. L. REV. 373, 381-82 (1981). This comparison illustrates a possible $195,000 difference between potential creditor exemptions in Ohio and Texas. A similar, example occurred recently in Florida. There, a debtor was allowed to exempt his 37,000 square foot home worth $6,000,000. See Jeff Testerman, *How much is a $6 Million Mansion in Avila Worth?*, ST. PETERSBURG TIMES, Dec. 6, 1993, at 1A.

Another example of the resulting non-uniformity under the 1978 Act can be illustrated by the result in *In re Freelander*, 93 B.R. 446 (Bankr. E.D. Va. 1988). In that case, a Virginia man was able in federal bankruptcy court to exempt a horse claimed to be valued between $50,000 and $640,000. This compares to the Storers inability under the same federal bankruptcy law to protect their equity in their home worth a small fraction of the horse.

The Court in *Moyses* did not inquire into the Constitution's Framers' intent behind the uniformity requirement. Rather, Chief Justice Fuller's opinion in *Moyses* relied on two circuit court cases that arose and were decided

under the earlier Bankruptcy Act of 1867. U.S. at 189. *In re Deckert*, 7 Fed.Cas. 343 (No. 3,728 C.C.E.D. Va 1874), and *In re Beckerford*, 3 Fed.Cas. 26 (No. 1,209 C.C.D. Mo. 1870). "The 1867 Act was, however, different in an important respect from the 1898 Act." *In re Sullivan*, 680 F.2d 1131, 1134 (7th Cir. 1982). The 1867 Act provided federal minimum exemptions in addition to property that was exempt under state law. *Id.* Therefore, "[t]he Moyses Court relied on *Deckert* and *Beckerford* without discussing the differences between the 1867 Act and the 1898 Act and without acknowledging that the uniformity challenges to the earlier Act had never been fully resolved by the Supreme Court." *Id.*

C.

The Federalist Papers make it clear that bankruptcy was an extension of the commerce power. The 1978 Act authorizes the states to intrude into an exclusive congressional prerogative over commerce: impairment of contract. Recently, this Court has defined a limit to what authority Congress has over commerce:

> But even these modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, [301 U.S. 1 (1937),] the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." [citations omitted]
>
> Similarly, in *Maryland v. Wirtz*, 392 U.S. 183 (1968), the Court reaffirmed that "the power to regulate commerce,

> though broad indeed, has limits" that "[t]he Court has ample power" to enforce. [citations omitted]

United States v. Lopez, _ U.S. _, 115 S.Ct. 1624, 1628-29 (1995).

There is an area of commerce exclusively for states, an area exclusively for Congress, and a co-extensive area in between. The "uniform" bankruptcy laws falls in the second, not the third. The Contract Clause prohibition of the states to abrogate contract is a limitation on state authority over commerce of no less force than the limitations on commerce power of Congress as this Court explained in *Lopez*. It is merely addressing the same issue of line definition but from a different direction. If Congress cannot cross the constitutional boundaries, it cannot invite under Section 522(b) the states to cross their boundary.

II.

Section 522(b)(1) also delegates the power to impair contracts to the states. Unlike insolvency law, there is not a coextensive power to impair contracts. The Contract Clause of the U.S. Constitution states: "No State shall...pass any...Law impairing the Obligation of Contracts." U.S. CONST. art. I, § 10, cl. 1. This Court has explained that determination of whether a state law substantially impairs a contractual relationship consists of a three part inquiry: "whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." *General Motors Corporation v. Romein*, 503 U.S. 181, 186 (1992).

In *Moyses*, Hanover National Bank brought suit to enforce a judgment against a bankrupt debtor. 186 U.S. at 183. The bank argued that the Bankruptcy Act of 1898 violated the Bankruptcy Clause because it failed to provide uniform laws on bankruptcies. *Id.* at 183. This Court held that federal bankruptcy laws must conform to geographical, not personal

uniformity. *Id.* at 188.[2] Therefore, it found that the Act of 1898 was, "in the constitutional sense, uniform throughout the United States, when the trustee takes in each State whatever would have been available to the creditors **if the bankrupt law had not been passed.**" *Id.* at 190. (emphasis added).

Thus this Court recognized the property rights in existence prior to the bankruptcy. As such, honoring state exemption laws, and none other, was in essence not impairment of contract. This is not unlike the recognition in federal bankruptcy of state law on secured transactions, lien law, or the like. Rather than impairment of contract rights, the law merely affirms them. On the other hand, when states chose whether state or federal law will apply in a national bankruptcy, the state has now entered the area of contract impairment.

Thus this Court's holding in *Moyses* it is not applicable to the present law because under the 1978 Act, in some states the trustee takes different from what is available to creditor had there been no bankruptcy law passed. For example, in Ohio state insolvency proceedings a creditor can reach all cash and other property. An Ohio domiciliary in bankruptcy can protect $400 in cash or other property OHIO REV. CODE ANN. §2329.66(A)(4) and (18) (Baldwin 1995).

III.

The states' response to the 1978 Act wherein a state may determine the amount of debt discharge (a federal prerogative) and, in the process, deny its citizens the opportunity to exercise the options afford by Section 522 risks violation of the

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2True uniformity in federal bankruptcy and a reexamination of *Moyses* will not undermine *Railway Labor Executives' Association v. Gibbons*, 455 U.S. 457 (1982), which stands for the position that bankruptcy laws for particular persons is unconstitutional.

Fourteenth Amendment. The Privileges and Immunities Clause of the Fourteenth Amendment of the U.S. Constitution states: "*No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.*" U.S. CONST. Amend. XIV (emphasis added). Because Ohio's exemptions are lower, the Storers' modest house is subject to being auctioned. The Storers' case exemplifies how Ohio's departure from the federal exemptions actually deprives an individual of federal opportunity.

In as much as States cannot impair contracts, Section 522(b)(1) is not deferral of coextensive authority, but the improper delegation of Congress' exclusive national authority to impair contract. Thus Congress has invited the states to deprive its residents of privileges only Congress can create or deny. This Court was never asked to consider this critical issue in *Moyses.*

IV.

The issue in this case is ripe for this Court's determination. As of March 1993, there were nearly 872,000 personal bankruptcies filed within the previous twelve month period. THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, FEDERAL JUDICIAL WORKLOAD STATISTICS, 6 (March 31, 1993). Though the number of filings is huge, there are few reported cases such as this on the issue of exemptions. The fact that there are not more appeals and decisions on the issue of exemptions does not evidence settled law. Instead it reflects the unappealing economics of bringing such an action through the appellate courts. The few courts of appeals facing the issue have felt bound by *Moyses,* some with doubts about its correctness but, nonetheless, still bound to its holdings. *See, e.g., In re Sullivan, 680 F.2d at 1134.*

Those Commentaries who have examined the issue view the *Moyses* application of geographical uniformity to be inconsistent with modern constitutional analysis. *See e.g.,*

Koffler, 58 N.Y.U.C. Rev. 22 (1983); Note: *Federal Exemptions and the opt-Out Provisions of Section 522: A Constitutional Challenge*, 58 IND. L. J. 143 (1982).

This case also provides a vehicle to further delineate the areas of exclusive authority of the national government. In addition to *Lopez, supra,* earlier this year this Court has found an area exclusively within the federal arena. *U. S. Term Limits, Inc. v. Thorton,* ____ U.S. ____, 115 S.Ct. 1842 (1995) ("States cannot impose term limits on members of Congress").

CONCLUSION

Congress' delegation of its exclusive power to impair contracts to the states via Section 522(b)(1) warrants consideration by this Court as to its constitutionality in light of the Bankruptcy Clause and the Contract Clause.

WHEREFORE, for the foregoing reasons, the Storers respectfully request that this Court issue a writ of certiorari to the U.S. Court of Appeals, Sixth Circuit.

Respectfully submitted,

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APPENDIX A

Larry D. STORER and Margaret K. Storer,
Debtors, Plaintiffs-Appellants,
v.
Bruce C. FRENCH, Trustee, Defendant-Appellee.

No. 94-3295.

United States Court of Appeals,
Sixth Circuit.
Argued May 18, 1995.
Decided July 13, 1995.
Before: MILBURN and SILER, Circuit Judges; COOK*, Chief District Judge.

MILBURN, Circuit Judge.

Plaintiffs appeal the decision of the district court sustaining the bankruptcy court's ruling that 11 U.S.C. s 522(b)(1) and Ohio Revised Code s 2329.662 were not unconstitutional. On appeal, the issues are (1) whether Ohio Revised Code s 2329.662 violates the Privileges and Immunities Clause of the Fourteenth Amendment to the Constitution of the United States by denying citizens of Ohio the right to exercise federal bankruptcy exemptions, (2) whether Ohio Revised Code s 2329.662 is invalid under the Supremacy Clause of the Constitution of the United States, and (3) whether 11 U.S.C. s 522(b)(1) violates the Fifth Amendment to the Constitution of the United States by denying citizens of Ohio either due process of law or equal protection of the laws. For the reasons that follow, we affirm.

I.

At all times relevant to this appeal, plaintiffs Larry D. Storer and Margaret K. Storer were citizens of the State of Ohio.

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The Honorable Julian A. Cook, Jr., Chief United States District Judge for the Eastern District of Michigan, stitting by designation.

On October 7, 1992, plaintiffs filed a bankruptcy petition under Chapter 7 of the United States Bankruptcy Code ("Bankruptcy Code"), 11 U.S.C. ss 101-1330. In the schedules accompanying their bankruptcy petition, plaintiffs claimed an interest in real estate valued at $22,000 with a mortgage balance of $7800, leaving a net equity of $14,200. Plaintiffs claimed a homestead exemption for the $14,200 equity in the real estate pursuant to the federal bankruptcy exemption statute, 11 U.S.C. s 522(d)(1), which, at the time, entitled debtors to a homestead exemption of up to $7500, or $15,000 in the case of joint debtors.

Defendant Bruce C. French, trustee of plaintiffs' bankruptcy estate, objected to the claim of the federal homestead exemption because Ohio Revised Code s 2329.662, enacted pursuant to 11 U.S.C. s 522(b)(1), denies debtors the use of the federal bankruptcy exemptions of 11 U.S.C. s 522(d) and allows a homestead exemption of up to only $5000, or $10,000 in the case of joint debtors. Plaintiffs submitted a memorandum to the bankruptcy court in which they argued that 11 U.S.C. s 522(b)(1) and Ohio Revised Code s 2329.662 were unconstitutional. The bankruptcy court rejected plaintiffs' arguments and ruled that both provisions were constitutional. Plaintiffs appealed to the district court, and the district court sustained the bankruptcy court. This timely appeal followed.

II.

Bankruptcy Code s 522(d) entitles debtors to exempt certain property from their bankruptcy estate. 11 U.S.C. s 522(d). One such exemption, commonly referred to as the "homestead" exemption, provided, at the time of plaintiffs' petition, that a debtor may exempt up to $7500 in property used by the debtor as a residence. 11 U.S.C. s 522(d)(1) (1988).[2] Bankruptcy Code s

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[2]That section provides: (d) The following property may be exempted under subsection (b)(1) of this section: (1) The debtor's aggregate interest, not to exceed $7,500 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in

522(b)(1) gives the debtor a choice between exempting the property specified in Bankruptcy Code s 522(d) or exempting the property protected by federal nonbankruptcy law or state or local law "unless the State law that is applicable to the debtor ... specifically does not so authorize." 11 U.S.C. s 522(b)(1).[3] Thus, Congress vested states with the authority to deny their citizens the ability to use the federal exemption scheme embodied in Bankruptcy Code s 522(d). Ohio is one of the many states that has elected to "opt-out" of the federal exemption scheme. See Ohio Rev.Code s 2329.662.[4] Ohio has replaced the federal exemptions with its own state exemptions, which are those

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a burial plot for the debtor or a dependent of the debtor. 11 U.S.C. s 522(d)(1) (1988). The section was amended in 1994 to allow the exemption of a debtor's aggregate interest up to $15,000 in value. Pub.L. No. 103-394, Title I, s 108(d), 108 Stat. 4112 (1994).

[3]That section provides in relevant part: (b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection.... Such property is-- (1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative, (2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place.... 11 U.S.C. s 522(b).

[4]That section provides: Pursuant to the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 U.S.C.A. 522(b)(1), this state specifically does not authorize debtors who are domiciled in this state to exempt the property specified in the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 U.S.C.A. 522(d). Ohio Rev.Code s 2329.662.

generally available to debtors under Ohio's general debtor-creditor law. Ohio's counterpart to the federal homestead exemption allows a debtor to exempt up to $5000 (instead of $7500 as under the federal exemption) in one parcel or item of property used by the debtor as a residence. Ohio Rev.Code s 2329.66(A)(1).[5]

Plaintiffs ask us to review the district court's determinations that Bankruptcy Code s 522(b)(1) and Ohio Revised Code s 2329.662 are not unconstitutional. Because those determinations are conclusions of law, we review them under the de novo standard. *Society Nat'l Bank v. Barrett*, 964 F.2d 588, 591 (6th Cir.1992).

A.

Plaintiffs argue that Ohio Revised Code s 2329.662 violates the Privileges and Immunities Clause of the Fourteenth Amendment to the Constitution of the United States because it denies citizens of Ohio the right to exercise federal bankruptcy exemptions. Plaintiffs contend that as a result of Ohio's exemption scheme, citizens of Ohio receive a lesser right to discharge in federal bankruptcy proceedings than citizens of states who can utilize the federal exemptions.

The Fourteenth Amendment forbids states from abridging the privileges and immunities that flow from national citizenship. U.S. Const. amend. XIV, s 1. This clause has been interpreted to protect only those rights that are unique to being a citizen of the United States rather than an individual state. *Shapiro v. Thompson*, 394 U.S. 618, 667, 89 S.Ct. 1322, 1348, 22 L.Ed.2d 600 (1969); see also *Slaughter-House Cases*, 83 U.S.(16 Wall) 36, 79-80, 21 L.Ed. 394 (1873). However, the Supreme

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[5] That section provides in relevant part: (A) Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows: (1) The person's interest, not to exceed five thousand dollars, in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence. Ohio Rev.Code s 2329.66(A)(1).

Court has indicated that the Privileges and Immunities Clause of the Fourteenth Amendment affords no protection where Congress has imposed or authorized the infringement. *Shapiro*, 394 U.S. at 667, 89 S.Ct. at 1348. In *Shapiro*, two groups of appellees challenged the one-year welfare residence requirements of the states of Pennsylvania and Connecticut, which had been enacted pursuant to congressional authorization. In rejecting the appellees' Fourteenth Amendment privileges and immunities argument, the Court stated: This kind of objection to state welfare residence requirements would seem necessarily to vanish in the face of congressional authorization, for except in those instances when its authority is limited by a constitutional provision binding upon it (as the Fourteenth Amendment is not), Congress has full power to define the relationship between citizens and the Federal Government. *Id.* at 668, 89 S.Ct. at 1349.

We believe that *Shapiro* forecloses plaintiffs' argument that Ohio Revised Code s 2329.662 violates the Privileges and Immunities Clause of the Fourteenth Amendment.[6] As the text of the statute indicates, Ohio Revised Code s 2329.662 was enacted pursuant to Bankruptcy Code s 522(b)(1), by which Congress vested states with the authority to deny their citizens the ability to use the federal exemption scheme embodied in Bankruptcy Code s 522(d). Because Ohio Revised Code s 2329.662 was enacted pursuant to this specific congressional authorization, the Privileges and Immunities Clause of the Fourteenth Amendment affords plaintiffs no protection.

B.

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[6]Consequently, it is not necessary for us to decide whether bankruptcy is a privilege or immunity of federal citizenship that is protected by the Fourteenth Amendment. We do note, however, that plaintiffs have not been deprived of the ability to discharge their debts in bankruptcy, even though they are entitled to exempt less property under Ohio law than under the federal exemption scheme.

Plaintiffs also argue that Ohio Revised Code s 2329.662 is invalid under the Supremacy Clause of the Constitution of the United States. Specifically, plaintiffs argue that a state law cannot abridge or modify a federal law. In addition, plaintiffs argue that Congress cannot delegate the authority to promulgate exemption laws.

These arguments, however, were answered by our decision in *Rhodes v. Stewart*, 705 F.2d 159 (6th Cir.), *cert. denied*, 464 U.S. 983, 104 S.Ct. 427, 78 L.Ed.2d 361 (1983), wherein we determined that Tennessee's opt-out provision, Tennessee Code Annotated s 26-2-112, was not invalid under the Supremacy Clause. In *Rhodes*, we stated: It is ... axiomatic ... that Congress has not preempted an area wherein it has legislated when it expressly and concurrently authorizes the state legislatures to disregard or opt-out of such federal legislative area. In such instance, rather than preempting the area, Congress expressly authorizes the states to "preempt" the federal legislation. Congress did not intend to preempt bankruptcy exemptions through the promulgation of 11 U.S.C. s 522(d) since it vested in the states the ultimate authority to determine their own bankruptcy exemptions. *Id.* at 163 (emphasis in original). We noted that "the states are empowered to create whatever exemptions they elect," even if they are less inclusive (or more restrictive) than the exemptions afforded debtors by the federal exemption scheme. *Id.* (citing *McManus v. Avco Fin. Servs.* (*In re McManus*), 681 F.2d 353, 355-56 (5th Cir.1982)). Likewise, " 'states may enact different exemptions which would possibly conflict with Congress' own exemption policy as it was reflected in s 522(d).' " *Id.* at 164 (quoting *McManus*, 681 F.2d at 357 n. 7). We also noted parenthetically that " ' s 522(b)(1) is not an unconstitutional delegation of congressional legislative power but rather is merely a recognition of the concurrent legislative power of the state legislatures to enact laws governing bankruptcy exemptions.' " *Id.* (*quoting Kosto v. Lausch* (*In re Lausch*), 16 B.R. 162, 165 (M.D.Fla.1981)). We concluded: Indeed if Congress intended to foreclose the states from promulgating more restrictive exemptions it could simply have enacted the exemption

scheme currently embodied in s 522(d) and not provided the states with an election to opt-out. The Supremacy Clause would have prevented the states from promulgating more restrictive and, therefore, inconsistent bankruptcy exemptions. *Id.* The Ohio statute involved in this case is similar in purpose and effect to the Tennessee statute involved in *Rhodes*. Accordingly, Rhodes governs this case, and plaintiffs' argument that Ohio Revised Code s 2329.662 is invalid under the Supremacy Clause is without merit.

C.

As a fallback to their Supremacy Clause argument, plaintiffs assert that Bankruptcy Code s 522(b)(1) and Ohio Revised Code s 2329.662 violate the Fifth Amendment to the Constitution of the United States by denying citizens of Ohio due process of law and equal protection of the laws. Because, under these circumstances, the Fifth Amendment has no application to the states, Ohio Revised Code s 2329.662 cannot violate the Fifth Amendment. Moreover, plaintiffs have not raised due process or equal protection arguments under the Fourteenth Amendment.[7]

As we understand plaintiffs' arguments, they are arguing that Ohio Revised Code s 2329.662 is unconstitutional merely because it was enacted pursuant to Bankruptcy Code s 522(b)(1), which they claim violates the Fifth Amendment. Therefore, we are left only to determine whether Bankruptcy Code s 522(b)(1)

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[7]Because plaintiffs have not argued that Ohio Revised Code s 2329.662 violates the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment, we do not address these issues specifically, although the same analysis would apply as that we employ in addressing plaintiffs' Fifth Amendment arguments. See *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n. 2, 95 S.Ct. 1225, 1228, 43 L.Ed.2d 514 (1975) (stating that the equal protection approach under the Fifth Amendment is the same as the approach under the Fourteenth Amendment); *Richardson v. Belcher*, 404 U.S. 78, 81, 92 S.Ct. 254, 257, 30 L.Ed.2d 231 (1971) (holding that federal statutes are consistent with the due process clause of the Fifth Amendment if they meet the rational basis test).

violates the Due Process Clause of the Fifth Amendment (or the Due Process Clause's equal protection component).

We shall address plaintiffs' equal protection argument first. Specifically, plaintiffs argue that Congress has clearly indicated a national policy of fresh start and that denying residents of Ohio the same fresh start as debtors of another state is not equal protection of the laws. [8] "[B]ankruptcy legislation is in the area of economics and social welfare. This being so, the applicable standard, in measuring the propriety of Congress' classification, is that of rational justification." *United States v. Kras*, 409 U.S. 434, 446, 93 S.Ct. 631, 638, 34 L.Ed.2d 626 (1973) (citations omitted). Applying this deferential standard, we conclude that Bankruptcy Code s 522(b)(1) does not violate equal protection.

It was rational for Congress to want "to preserve the prerogative of the states to set exemptions for debtors as had been the practice under the old Bankruptcy Act." *Giles v. Credithrift of Am., Inc.* (*In re Pine*), 717 F.2d 281, 282 (6th Cir.1983), *cert. denied*, 466 U.S. 928, 104 S.Ct. 1711, 80 L.Ed.2d 183 (1984). Likewise, it was rational for Congress to want "to create nationwide uniformity by establishing one list of exemptions contained in the federal Bankruptcy Code." *Id.* at 282-83. Therefore, "a compromise bill containing elements of each plan" is supported by a rational basis. *Id.* at 283. Accordingly, we reject plaintiffs' equal protection argument.

We shall now address plaintiffs' due process argument. Because bankruptcy is in the area of economics and social welfare and is not a fundamental right, bankruptcy laws are reviewed

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[8]We recognize that "[a] purpose of the Bankruptcy [Code] was to ensure that debtors be able to make fresh starts after bankruptcy.... But the clear language of the statute takes precedence
over the more general rehabilitative policies underlying the [Bankruptcy Code]." Giles v. Credithrift of Am., Inc. (In re Pine), 717 F.2d 281, 284 (6th Cir.1983) (citations omitted), cert. denied, 466 U.S. 928, 104 S.Ct. 1711, 80 L.Ed.2d 183 (1984).

only for a rational basis under due process standards. See Kras, 409 U.S. at 446, 93 S.Ct. at 638; *United States v. Carolene Prods. Co.*, 304 U.S. 144, 154, 58 S.Ct. 778, 784, 82 L.Ed. 1234 (1938) ("where the legislative judgment is drawn in question, [the inquiry] must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for [the legislation]"). As earlier stated, it was reasonable for Congress, as a compromise between two rational alternatives, to pass legislation that contains elements of each of those alternatives.

As part of plaintiffs' due process argument, they claim that Bankruptcy Code s 522(b)(1) is the law of the land; thus, it cannot have the effect of being applied differently based merely on state citizenship. We believe that this assertion is nothing more than another way of arguing that Bankruptcy Code s 522(b)(1) is not a uniform law. However, we have previously concluded that "11 U.S.C. s 522(b)(1), which authorizes states to opt-out of the federal exemption scheme allowing the states to elect differing exemption structures, is an exercise of the legislative prerogative to establish a 'uniform law' and therefore falls within that scope of authority provided to Congress in the Bankruptcy Clause." *Rhodes*, 705 F.2d at 162; see also *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 190, 22 S.Ct. 857, 861, 46 L.Ed. 1113 (1902) (holding that "[t]he general operation of the [exemption] law is uniform although it may result in certain particulars differently in different states"). Therefore, plaintiffs' due process argument is rejected.

III.

For the reasons stated, the judgment of the district court is AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

Case No. 3:93 CV 7339

IN RE:
STORER, Larry D. and Margaret K., *
Debtors. *

LARRY D. STORER and MARGARET K. STORER,*
Plaintiff/Appellants *
vs. *
BRUCE COMLY FRENCH, Trustee, *
Defendant/Appellee. *

This is a bankruptcy appeal in which the parties have consented to exercise of jurisdiction by the undersigned. The single issue raised by the debtors' appeal is whether the homestead exemptions provided by 11 U.S.C. §522(b)(1) and O.R.C. §2329.662 are constitutional.

The debtors contend that the effect of these statutes is to grant them a lesser exemption, due to the application of Ohio law, than would be available under federal law alone.

The claim that this kind of statutory scheme and the effect of its operation are unconstitutional has been rejected by the Sixth Circuit. In Rhodes v. Stewart, 705 F.2d 159 (6th Cir.), cert. denied, 464 U.S. 983 (1983), the Sixth Circuit held that a Tennessee statute that had an effect similar to the Ohio provision being challenged herein was constitutional.

So far as I can tell, there is no effective difference between the statutory scheme at issue here and the provisions at issue in Rhodes. That being the case, the debtors' appeal must be overruled.

It is, accordingly,

ORDERED THAT the appeal of the debtors be, and the same hereby is overruled.

So ordered.

/s/James Carr
United States Magistrate Judge

APPENDIX C

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF OHIO WESTERN DIVISION

In Re	)	
	)	
Larry D. Storer and	)	
Margaret K. Storer,	)	
Debtors	)	Case No. 92-33578

MEMORANDUM OPINION AND ORDER

This cause comes before the Court upon Debtor's Memorandum in Support of Contention That 7 U.S.C. §522(b)(1) ("State Opt-Out") Is Unconstitutional and Trustee's Response to Debtors' Motion to Have Declared Unconstitutional 11 U.S.C. Section 522(b). The court deems Debtors' Memorandum a Motion for purposes of this Opinion. The Court has reviewed the written arguments of counsel, supporting affidavits, and exhibits, as well as the entire record in the case. Based upon that review, and for the following reasons, this Court finds that Debtors' Memorandum In Support of Contention That 7 U.S.C. §522(b)(1) ("State Opt-Out") Is Unconstitutional should be Denied. This matter shall proceed on Trustee's Request for Hearing Concerning Debtors' Objection To The Trustee's Application To Appoint An Auctioneer, etc.

FACTS

Debtors filed a Petition under Chapter 7 of the united States Bankruptcy Code on October 7, 1992. Within their attend schedules, Debtors claimed an interest in real estate valued at Twenty Two Thousand and 00/100 Dollars ($22,000.00) with a mortgage balance of Seven Thousand Eight Hundred and 00/100

Dollars ($7,800.00). Debtors claimed an exemption for the equity in the real estate of Fourteen Thousand Two Hundred and 00/100 Dollars ($14,200.00) since under the federal exemption statute, they are entitled to an exemption for up to Fifteen Thousand and 00/100 Dollars ($15,000.00) of equity in their real estate.

The question regarding the exemption was raised after the Trustee, Bruce C. French, (hereafter "Trustee") filed an Application to Employ Auctioneer, Declaration of Auctioneer and Order. Debtors filed an Objection to Employing Auctioneer and the trustee requested a Hearing on Debtors' Objection. The Trustee and Counsel for Debtors submitted stipulations in lieu of hearing on Debtors' Objection. Under the stipulations, the hearing on objections was vacated. the trustee and Counsel for Debtors agreed to submit memorandum regarding the constitutionality of Ohio's "opt-out" provision relating to exemptions. Debtors filed a Memorandum in Support of Contention That 7 U.S.C. §522(b)(1) ("State Opt-Out") is Unconstitutional on February 8, 1993, and the Trustee's Response was filed on February 23, 1993.

LAW

The relevant portions of 11 USC §522 read in part as follows:

> §522 **Exemptions.**
> (b) Notwithstand section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, int he alternative, paragraph (2) of this subsection. In join cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whole estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of

this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such section is permitted under the law of the jurisdiction where the case is filed. Such property is--

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not authorize;

DISCUSSION

The underlying case concerns the exemptions from property of the estate, which under 28 U.S.C. §157(b)(2)(B) is a core proceeding. The issue regarding the constitutional validity of statutory exemptions from the estate arises in a case under Title 11. In the alternative, this issue is related to a case under Title 11. Under 28 U.S.C. §157(a) and (b)(1), Bankruptcy Judges may hear and determine all cases arising in or a case under Title 11.

Based upon the Sixth Circuit opinion of *Rhodes v. Stewart*, 705 F.2d 159 (6th Cir. 1983) *cert denied* 464 U.S. 983, 104 S.Ct. 427, 78 L.Ed.2d 361 (1983), this Court finds without merit, Debtors' Memorandum In Support of Contention That 7 U.S.C. §522 (b)(1) ("State Opt-Out") is Unconstitutional. The Sixth Circuit found constitutional the states' right to "opt-out" out of the federal exemption statute so long as there is no conflict between the federal and state statute. This option even extends to those state statutes which are less beneficial to the debtor then the federal statute.

Congress' authorization to enact uniform bankruptcy laws is derived from Article 1, §8, cl. 4 of the United States Constitution. *Rhodes, supra,* at 162. Geographical uniformity is required. *Rhodes, supra,* at 162 (quoting *Hanover National Bank v. Moyses*, 186 U.S. 181, 22 S.Ct. 857, 46 L.Ed. 1112 (1902)). To effectuate this requirement, Congress promulgated 11

U.S.C. §522(d). Under this statue, States have the explicit option to preempt the federal statute in determining what exemptions exists under bankruptcy laws. Congress has failed to impose restrictions upon the States' preemptive authority. This suggests that States are empowered to create any (emphasis added) exemptions so long as they are not in conflict with §522.

Ohio has elected to "opt-out" of the federal exemption scheme pursuant to Ohio Revised Code §2329.662. Since there is no apparent conflict between Ohio's exemption statue and 11 U.S.C. §522, Ohio's statute is constitutional. Consequently, Debtors' challenge of the constitutionality of Ohio's "opt-out" provision is unfounded and Debtor's Memorandum should be denied.

In reaching the conclusion found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this opinion.

Accordingly, it is

ORDERED that Debtors' Memorandum In Support of Contention That 7 U.S.C. §522(b) (1) ("State Opt-Out") is Unconstitutional be, and is hereby, **DENIED.**

IT IS FURTHER ORDERED that Trustee's Request For Hearing Concerning Debtors' Objection To The Trustee's Application To Appoint An Auctioneer, etc. shall be, and is hereby, scheduled for Hearing on **June 8, 1993, at 11:00 A.M.** in Courtroom No. 2, Room 119, United States Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio.

Dated: 11 May 1993

\s\ Richard L. Speer
Richard L. Speer
United States Bankruptcy Judge

APPENDIX D

UNITED STATES CONSTITUTION SECTIONS

U.S. CONST. Art. I, § 8, cl. 1,4.

Section 8. [1] The Congress shall have Power...

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

U.S. CONST. Art. I, § 10, cl. 1.

Section 10. [1] No State shall enter into any Treaty, Alliance or Confederation; grant Letters of Marque and Reprisal; coin money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

APPENDIX E

UNITED STATES CONSTITUTIONAL AMENDMENTS

U.S. CONST. Amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amend. XIV, § 1.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

UNITED STATES STATUTES

11 U.S.C. § 522 (1995)

Sec. 522. Exemptions

(a) In this section--

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is--

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in

which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except--

(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;

(2) a debt secured by a lien that is--

(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 506(d) of this title; or

(B) a tax lien, notice of which is properly filed; or

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution.

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed $7,500 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $1,200 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $200 in value in any particular item or $4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $500 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $400 plus up to $3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $750 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive--

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service,

to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless--

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1986 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

(11) The debtor's right to receive, or property that is traceable to--

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this

section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is--

(1) a judicial lien; or

(2) a nonpossessory, nonpurchase-money security interest in any--

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(B) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(C) professionally prescribed health aids for the debtor or a dependent of the debtor.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if--

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have

exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if--

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except--

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

APPENDIX G

OHIO STATUTES

OHIO REV. CODE ANN. §2329.66 (1995)

2329.66 PROPERTY THAT PERSON DOMICILED IN THIS STATE MAY HOLD EXEMPT

(A) Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows:

(1)(a) In the case of a judgment or order regarding money owed for health care services rendered or health care supplies provided to the person or a dependent of the person, one parcel or item of real or personal property that the person or a dependent of the person uses as a residence. Division (A)(1)(a) of this section does not preclude, affect, or invalidate the creation under this chapter of a judgment lien upon the exempted property but only delays the enforcement of the lien until the property is sold or otherwise transferred by the owner or in accordance with other applicable laws to a person or entity other than the surviving spouse or surviving minor children of the judgment debtor. Every person who is domiciled in this state may hold exempt from a judgment lien created pursuant to division (A)(1)(a) of this section his interest, not to exceed five thousand dollars, in the exempted property.

(b) In the case of all other judgments and orders, the person's interest, not to exceed five thousand dollars, in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence.

(2)(a) In the case of a judgment or order regarding money owed for health care services rendered or health care supplies provided to the person or a dependent of the person, one motor vehicle;

(b) In the case of all other judgments and orders, the person's interest, not to exceed one thousand dollars, in one motor vehicle.

(3) The person's interest, not to exceed two hundred dollars in any particular item, in wearing apparel, beds, and bedding, and

the person's interest, not to exceed three hundred dollars in each item, in one cooking unit and one refrigerator or other food preservation unit;

(4)(a) The person's interest, not to exceed four hundred dollars, in cash on hand, money due and payable, money to become due within ninety days, tax refunds, and money on deposit with a bank, savings and loan association, credit union, public utility, landlord, or other person. This division applies only in bankruptcy proceedings. This exemption may include the portion of personal earnings that is not exempt under division (A)(13) of this section.

(b) Subject to division (A)(4)(d) of this section, the person's interest, not to exceed two hundred dollars in any particular item, in household furnishings, household goods, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment, that are held primarily for the personal, family, or household use of the person.

(c) Subject to division (A)(4)(d) of this section, the person's interest in one or more items of jewelry, not to exceed four hundred dollars in one item of jewelry and not to exceed two hundred dollars in every other item of jewelry.

(d) Divisions (A)(4)(b) and (c) of this section do not include items of personal property listed in division (A)(3) of this section.

If the person does not claim an exemption under division (A)(1) of this section, the total exemption claimed under division (A)(4)(b) of this section shall be added to the total exemption claimed under division (A)(4)(c) of this section, and the total shall not exceed two thousand dollars. If the person claims an exemption under division (A)(1) of this section, the total exemption claimed under division (A)(4)(b) of this section shall be added to the total exemption claimed under division (A)(4)(c) of this section, and the total shall not exceed one thousand five hundred dollars.

(5) The person's interest, not to exceed an aggregate of seven hundred fifty dollars, in all implements, professional books, or tools of his profession, trade, or business, including agriculture;

(6)(a) The person's interest in a beneficiary fund set apart, appropriated, or paid by a benevolent association or society, as exempted by section 2329.63 of the Revised Code;

(b) The person's interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code;

(c) The person's interest in a policy of group insurance or the proceeds of a policy of group insurance, as exempted by section 3917.05 of the Revised Code;

(d) The person's interest in money, benefits, charity, relief, or aid to be paid, provided, or rendered by a fraternal benefit society, as exempted by section 3921.18 of the Revised Code;

(e) The person's interest in the portion of benefits under policies of sickness and accident insurance and in lump-sum payments for dismemberment and other losses insured under those policies, as exempted by section 3923.19 of the Revised Code.

(7) The person's professionally prescribed or medically necessary health aids;

(8) The person's interest in a burial lot, including, but not limited to, exemptions under section 517.09 or 1721.07 of the Revised Code;

(9) The person's interest in the following:

(a) Moneys paid or payable for living maintenance or rights, as exempted by section 3304.19 of the Revised Code;

(b) Worker's compensation, as exempted by section 4123.67 of the Revised Code;

(c) Unemployment compensation benefits, as exempted by section 4141.32 of the Revised Code;

(d) Aid to dependent children payments, as exempted by section 5107.12 of the Revised Code;

(e) General assistance payments, as exempted by section 5113.03 of the Revised Code;

(f) Disability assistance payments, as exempted by section 5115.07 of the Revised Code.

(10)(a) Except in cases in which the person was convicted of or pleaded guilty to a violation of section 2921.41 of the Revised Code and in which an order for the withholding of restitution

from payments was issued under division (C)(2)(b) of that section, and only to the extent provided in the order, and except as provided in sections 3105.171, 3105.63, 3111.23, and 3113.21 of the Revised Code, the person's right to a pension, benefit, annuity, retirement allowance, or accumulated contributions, the person's right to a participant account in any deferred compensation program offered by the Ohio public employees deferred compensation board, a government unit, or a municipal corporation, or the person's other accrued or accruing rights, as exempted by section 145.56, 145.75, 146.13, 742.47, 3307.71, 3309.66, or 5505.22 of the Revised Code, and the person's right to benefits from the policemen and firemen's death benefit fund;

(b) Except as provided in sections 3111.23 and 3113.21 of the Revised Code, the person's right to receive a payment under any pension, annuity, or similar plan or contract, not including a payment from a stock bonus or profit-sharing plan or a payment included in division (A)(6)(b) or (10)(a) of this section, on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the person and any of his dependents, except if all the following apply:

(i) The plan or contract was established by or under the auspices of an insider that employed the person at the time his rights under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) The plan or contract is not qualified under the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.

(c) Except for any portion of the assets that were deposited for the purpose of evading the payment of any debt and except as provided in sections 3111.23 and 3113.21 of the Revised Code, the person's right in the assets held in, or to receive any payment under, any individual retirement account, individual retirement annuity, or Keogh or "H.R. 10" plan that provides benefits by reason of illness, disability, death, or age, to the extent reasonably necessary for the support of the person and any of his dependents.

(11) The person's right to receive spousal support, child support, an allowance, or other maintenance to the extent

reasonably necessary for the support of the person and any of his dependents;

(12) The person's right to receive, or moneys received during the preceding twelve calendar months from, any of the following:

(a) An award of reparations under sections 2743.51 to 2743.72 of the Revised Code, to the extent exempted by division (D) of section 2743.66 of the Revised Code;

(b) A payment on account of the wrongful death of an individual of whom the person was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the person and any of his dependents;

(c) A payment, not to exceed five thousand dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the person or an individual for whom the person is a dependent;

(d) A payment in compensation for loss of future earnings of the person or an individual of whom the person is or was a dependent, to the extent reasonably necessary for the support of the debtor and any of his dependents.

(13) Except as provided in sections 3111.23 and 3113.21 of the Revised Code, personal earnings of the person owed to him for services rendered within thirty days before the issuing of an attachment or other process, the rendition of a judgment, or the making of an order, under which the attempt may be made to subject those earnings to the payment of a debt, damage, fine, or amercement, in an amount equal to:

(a) In the case of a judgment or order regarding money owed for health care services rendered or health care supplies provided to the person or a dependent of the person, the greater of the following amounts:

(i) If paid weekly, thirty times the current federal minimum hourly wage; if paid biweekly, sixty times the current federal minimum hourly wage; if paid semimonthly, sixty-five times the current federal minimum hourly wage; or if paid monthly, one hundred thirty times the current federal minimum hourly wage that is in effect at the time the earnings are payable, as prescribed

by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 206(a)(1), as amended;

(ii) Eighty-eight per cent of the disposable earnings owed to the person.

(b) In the case of all other judgments and orders, the greater of the following amounts:

(i) The amount specified in division (A)(13)(a)(i) of this section;

(ii) Seventy-five per cent of the disposable earnings owed to the person.

(14) The person's right in specific partnership property, as exempted by division (B)(3) of section 1775.24 of the Revised Code;

(15) A seal and official register of a notary public, as exempted by section 147.04 of the Revised Code;

(16) Any other property that is specifically exempted from execution, attachment, garnishment, or sale by federal statutes other than the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 U.S.C.A. 101, as amended;

(17) The person's interest, not to exceed four hundred dollars, in any property, except that this division applies only in bankruptcy proceedings.

(B) As used in this section:

(1) "Disposable earnings" means net earnings after the garnishee has made deductions required by law, excluding the deductions ordered pursuant to section 3111.23 or 3113.21 of the Revised Code.

(2) "Insider" means:

(a) If the person who claims an exemption is an individual, a relative of the individual, a relative of a general partner of the individual, a partnership in which the individual is a general partner, a general partner of the individual, or a corporation of which the individual is a director, officer, or in control;

(b) If the person who claims an exemption is a corporation, a director or officer of the corporation; a person in control of the corporation; a partnership in which the corporation is a general partner; a general partner of the corporation; or a relative of a

general partner, director, officer, or person in control of the corporation;

(c) If the person who claims an exemption is a partnership, a general partner in the partnership; a general partner of the partnership; a person in control of the partnership; a partnership in which the partnership is a general partner; or a relative in, a general partner of, or a person in control of the partnership;

(d) An entity or person to which or whom any of the following apply:

(i) The entity directly or indirectly owns, controls, or holds with power to vote, twenty per cent or more of the outstanding voting securities of the person who claims an exemption, unless the entity holds the securities in a fiduciary or agency capacity without sole discretionary power to vote the securities or holds the securities solely to secure to debt and the entity has not in fact exercised the power to vote.

(ii) The entity is a corporation, twenty per cent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the person who claims an exemption, or by an entity to which division (B)(2)(d)(i) of this section applies.

(iii) A person whose business is operated under a lease or operating agreement by the person who claims an exemption, or a person substantially all of whose business is operated under an operating agreement with the person who claims an exemption.

(iv) The entity operates the business or all or substantially all of the property of the person who claims an exemption under a lease or operating agreement.

(e) An insider, as otherwise defined in this section, of a person or entity to which division (B)(2)(d)(i), (ii), (iii), or (iv) of this section applies, as if the person or entity were a person who claims an exemption;

(f) A managing agent of the person who claims an exemption.

(3) "Participant account" has the same meaning as in section 145.71 of the Revised Code.

(4) "Government unit" has the same meaning as in section 145.74 of the Revised Code.

(C) For purposes of this section, "interest" shall be determined as follows:

(1) In bankruptcy proceedings, as of the date a petition is filed with the bankruptcy court commencing a case under Title 11 of the United States Code;

(2) In all cases other than bankruptcy proceedings, as of the date of an appraisal, if necessary under section 2329.68 of the Revised Code, or the issuance of a writ of execution.

An interest, as determined under division (C)(1) or (2) of this section, shall not include the amount of any lien otherwise valid pursuant to section 2329.661 of the Revised Code.

OHIO REV. CODE §2329.662 (1995)

2329.662 BANKRUPTCY REFORM ACT OF 1978; EXEMPTIONS REJECTED

Pursuant to the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 U.S.C.A. 522(b)(1), this state specifically does not authorize debtors who are domiciled in this state to exempt the property specified in the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 U.S.C.A. 522(d).

APPENDIX H

RELEVANT STATE STATUTES

KAN. STAT. ANN. §60-2301 (1995).

60-2301. Homestead; extent of exemption. A homestead to the extent of 160 acres of farming land, or of one acre within the limits of an incorporated town or city, or a manufactured home or mobile home, occupied as a residence by the owner or by the family of the owner, or by both the owner and family thereof, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when the relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon. The provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife, when that relation exists.

N.D. CENT. CODE §47-18-01 (1995).

47-18-01. Homestead exemption - Area and value. The homestead of any person, whether married or unmarried, residing in this state shall consist of the land upon which the claimant resides, and the dwelling house on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed eighty thousand dollars in value, over and above liens or encumbrances or both. The homestead shall be exempt from judgment lien and from execution or forced sale, except as otherwise provided in this chapter. In no case shall the homsestead embrace different lots or tracts of land unless they are contiguous.

TEXAS CONST. ART., 16, § 50.

Section 50. Homestead; protection from forced sale; mortgages, trust deed and liens

The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead; nor may the owner or claimant of the property claimed as homestead, if married, sell or abandon the homestead without the consent of the other spouse, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money thereor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void. This amendment shall become effective upon its adoption.

TEX. PROP. CODE ANN. § 41.002 (West 1995).

Section 41.002. Homestead and Sepulcher Exemption

(a) A homestead and one or more lots held for use as a sepulcher of a family or a single adult who is not a member of a family are exempt from attachment, execution, and forced sale for the payment of debts, except for encumbrances properly fixed on the property.

MICH. COMP. LAWS §27A.6023 (1995).

27A.6023 **Property exempt from levy and sale.** (1) The following property of the debtor and the debtor's dependents shall be exempt from levy and sale under any execution:...

(h) A homestead of not exceeding 40 acres of land and the dwelling house and appurtenances on that homestead, and not included in any recorded plat, city or village, or, instead, and at the option of the owner, a quantity of land not exceeding in amount 1 lot, being within a recorded town plat, city, or village, and the dwelling house and appurtenances on that land, owned and occupied by any resident of this state, not exceeding in value $3,500.00....

IND. CODE ANN. § 34-2-28-1 (Burns 1995).

Section 34-2-28-1. Amount of exemption -- Property subject to voluntarily granted liens [effective until January 1, 1996]. -- (a) The following property of a judgment debtor domiciled in Indiana is not subject to levy or sale on execution or any other final process from a court, for a judgment founded upon an express or implied contract or a tort claim:

(1) Real estate or personal property constituting the personal or family residence of the judgment debtor or a dependent of the judgment debtor or estates or rights in that real estate or personal property, of not more than seven thousand five hundred dollars ($7,500). The exemption under this subsection is individually available to joint judgment debtors concerning property held by them as tenants by the entireties.

IOWA CODE ANN. § 561.16 (West 1995)

Section 561.16 Exemption

The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary....

OR. REV. STAT. § 23.240 (1995).

23.240. Exemption of homestead or proceeds thereof; duration of exemption.

(1) A homestead shall be exempt from sale on execution, from the lien of every judgment and from liability in any form for the debts of the owner to the amount in value of $25,000, except as otherwise provided by law. The exemption shall be effective without the necessity of a claim thereof by the judgment debtor. When two or more members of a household are debtors whose interests in the homestead are subject to sale on execution, the lien of a judgment or liability in any form, their combined exemptions under this section shall not exceed $33,000.